

***PUBLIC-PRIVATE TRANSPORTATION ACT***  
***IMPLEMENTATION GUIDELINES***  
***FOR***  
***THE CITY OF WILLIAMSBURG, VIRGINIA***  
***MAY 9, 2002***

***INTRODUCTION***

The Public-Private Transportation Act of 1995 (the Act) is the legislative framework enabling the Commonwealth of Virginia, qualifying local governments and certain other political entities to enter into agreements authorizing private entities to acquire, construct, improve, maintain, and/or operate qualifying transportation facilities. Passage of the Act, which took effect July 1, 1995, followed a year-long collaboration among the General Assembly, representatives from the private sector, and the transportation agencies.

***The Act***

The Act grants responsible public entities the authority to allow private entities to construct and/or operate qualifying transportation facilities if the public entities determine there is a need for the facilities and private involvement may provide the facilities to the public in a timely or cost-effective fashion. The Act defines "responsible public entities" to include any public entity that has the power to acquire, construct, improve, maintain and/or operate the

transportation facilities. Individually negotiated comprehensive agreements will define the respective rights and obligations of the responsible public entity and the private operator. Pursuant to § 56-558 (A and C), it is the intent of the Act to encourage public/private ventures for transportation facilities which may result in the availability of facilities in a more timely or less costly fashion and to facilitate to the greatest extent possible the federal pooling and funding mechanisms to the end that transportation financing be expanded and accelerated and have the greatest possible flexibility in contracting between public and private entities. The complete text of the Public-Private Transportation Act of 1995 has been included with these guidelines.

### ***EXECUTIVE SUMMARY***

Following are procedural guidelines adopted by the City of Williamsburg to guide the selection of projects under the purview of the City. The Public-Private Transportation Act allows both solicited and unsolicited project proposals. The major steps involved in evaluating, selecting, and implementing the projects are similar for both solicited and unsolicited proposals. Private entities may also propose innovative financing methods, including the imposition of user fees or service payments under the provisions of the Act. The financing arrangements of the private entity may include the issuance of debt, equity or other securities or obligations. The proposer may enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility. While procedures incorporated in these guidelines are consistent with those of the

Code of Virginia §11-37, the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act (§ 11-35 et seq.).

### ***Solicited Proposals***

From time to time, the City may issue Requests for Proposals (RFPs) inviting proposals from private entities to acquire, construct, improve, maintain and/or operate qualifying transportation facilities as defined in the Public-Private Transportation Act of 1995. The RFP will specify information and documents which must accompany the proposals, the factors which will be used in evaluating the proposals and contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications which will be required of private entities submitting proposals (proposers). Such RFPs may invite proposers to identify projects or may solicit proposals on City identified projects.

### ***Unsolicited Proposals***

The Act permits responsible public entities to receive , evaluate and select for negotiations unsolicited proposals from private entities to acquire, construct, improve, maintain and/or operate qualifying transportation facilities under their jurisdiction. The City will receive such unsolicited proposals at any time pursuant to these guidelines. Once a proposal is received and deemed by the City to meet all legal and policy requirements for initial review, as set out in §§56-558 and 56-560 and these Guidelines, the City will publish a notice accepting such proposal and inviting others to submit competing proposals.. The deadline for City receipt of any such competing proposals will be 10:00 a.m. EST, or EDT if then applicable

in Williamsburg on the 45th day after the City's initial publication of the notice. Only those competing, compliant proposals submitted by such deadline will be considered unless and until the City terminates consideration of, or negotiation on the original unsolicited proposal and competing, compliant proposals that were timely received. .Proposals submitted to the City must contain certain information on proposer qualifications and experience, project characteristics, project financing, public support and project compatibility. For unsolicited proposals, such information is specified in these guidelines. For solicited proposals, the information to be sought will be specified in the request for proposals. After a 45 day period for receipt of competing proposals the City will determine in its sole discretion whether one or more proposers are qualified, and whether the project as proposed appears in one or more cases technically and financially feasible. The City staff will make a recommendation to the City Council as to the acceptance of a specific proposal and request approval to initiate negotiations of a comprehensive agreement in accordance with the PPTA. If approved by the City Council the City Manager will appoint a team to negotiate the comprehensive agreement with the proposer.

## ***PROJECT PROPOSALS***

### ***Solicited Proposals***

The City may solicit project proposals through issuance of a Request for Proposals (RFP). The RFP may invite private entities to propose to construct, acquire, improve, finance and/or operate either projects of their own choosing or specified transportation facilities in specific locations. Whether the RFP is for a general solicitation or project-specific, proposers will be encouraged to be as innovative as possible in their proposals. The Request for Proposals will outline the minimum qualifications and project selection criteria

including any unique capabilities or qualifications, which would be required of the proposer. Pre-proposal conferences may be held, as deemed appropriate, and notice of such will be provided in the RFP. Proposers will be instructed as to the format in which to submit proposals and what minimum information, materials, and fees must be submitted in order for the proposal to be considered complete. Public notice of the Request for Proposals will be posted at least 60 days prior to the date set for receipt of proposals by posting in a public area normally used for posting of City public notices and by publication in a newspaper or newspapers or other publications of general circulation within and/or outside the Commonwealth of Virginia so as to provide reasonable notice to the maximum number of proposers that can be reasonably anticipated to submit proposals. In addition, proposals may be solicited directly from potential proposers.

### ***Unsolicited Proposals***

The Act permits responsible public entities to receive, evaluate and select for negotiations unsolicited proposals from private entities to acquire, construct, improve, maintain and/or operate qualifying transportation facilities. **The City will evaluate unsolicited proposals whenever received so long as the proposals meet the requirements of the Act and these guidelines.** Upon receipt of any and all unsolicited proposals and acceptance by the City as meeting all legal and policy requirements, the City will post a notice for 45 days in a public area it normally uses for posting of public notices and will publish the same notice in one or more newspapers or periodicals of general circulation as appropriate to notify contractors who might be interested. The notice will state that the City has received and accepted an unsolicited proposal under the Act, that it intends to evaluate the proposal, that it may negotiate a comprehensive agreement with the proposer based on the proposal, and

that it will accept for simultaneous consideration any competing and compliant proposals the City receives in accordance with these guidelines within 45 days of the initial posting and publication of the notice. Copies of proposals are available upon request. The notice will summarize the proposed transportation facility or facilities, identify their proposed location and interconnections with other transportation facilities, and provide a conceptual design. Failure by a prospective proposer to submit a competing proposal within such 45 day period shall preclude such proposal from the City's consideration unless and until the City terminates consideration of, or negotiations on, the original proposal and any and all competing proposals received within such 45 day period. The City will not grant requests to extend the 45 day period; and the receipt of one or more competing proposals during such period will not trigger the posting or publication of a new notice or the start of any new 45 day period. The City recognizes that it may receive proposals, which have certain characteristics in common yet differ proposal or any portion of such proposal received after the original proposal, as either a competing proposal or a noncompeting unsolicited proposal. Because of the consequences to a proposer for failing to submit within the 45 day period a proposal which the City could later deem a competing proposal, prospective proposers are strongly urged to monitor the City's notices of proposals received, and to be prepared to submit within such 45 day period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, a proposal which is the subject of the notice. In the event a proposer is unsure whether its planned proposal will be sufficiently similar to the proposal which was the subject of a notice to be deemed a competing proposal, such proposer may submit to the City a written request for a preliminary determination of whether its project

would be deemed a competing proposal in whole or in part. The City will endeavor no later than seven days thereafter to respond to such request with a preliminary determination as to whether or not the proposal would be a competing proposal or that it has received insufficient information to make a determination. In the event the City elects to treat a proposal, or part of a proposal, received within the 45 day period as a noncompeting proposal, the City will follow the above notice procedure to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice. Upon the expiration of such 45 day period, the City will subject the original proposal, together with any and all properly received competing proposals, to the evaluation and selection process set forth below.

### ***Qualifying Transportation Facilities***

To become subject to the evaluation and selection process, the Act requires a proposal to meet, among others, three criteria. First, the proposal must seek approval for a private entity to acquire, construct, improve, maintain, finance and/or operate specified transportation facilities. Second, the transportation facilities so specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods. Third, the proposal must be submitted to the public entity which currently has or may assert the power itself to perform the functions the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.

## ***PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS***

### ***UNSOLICITED PROPOSALS***

#### ***Proposal Submission***

Proposers submitting to the City are required to deliver 10 copies of their Proposal to the following address:

City Manager

City of Williamsburg

401 Lafayette Street

Williamsburg, Virginia 23185-3617

Proposals are to be sealed in mailing envelopes or packages bearing the proposer's name, address and the words "Public-Private Transportation Proposal" clearly written on the outside. The cover page must include the title of the proposal, the name and address of the proposing entity, the person authorized to act on behalf of the proposer and his or her telephone and facsimile numbers. Also pursuant to the Act, copies of proposals must be provided directly to the governing body of each local jurisdiction (city, county, town etc.) affected by the proposed project. A list of all local jurisdictions being provided a copy of the proposal must accompany the proposal with name and address of recipient and date delivered. In addition, in the case where the facility is a highway or bridge a copy of such proposal is to be delivered to the Commonwealth Transportation Commissioner on the same day delivered to the City. The Commissioner will provide written comments to the City within 60 days of receipt of such proposal.



### ***Proposal Review Fee***

A non-refundable, non-negotiable minimum Proposal Review Fee of \$10,000 will be required to offset the costs of processing and reviewing the proposal. Fees are to be submitted in the form of a cashier's check made payable to the City of Williamsburg.

### ***Proposal Preparation***

Proposals must be signed by an authorized representative of the firm or consortium making the proposal. All information requested under ***"Proposal Requirements"*** should be submitted. Proposers failing to submit all information requested for proposals may be given an opportunity promptly to submit missing information or may be given a lowered evaluation of the proposal. Proposals which lack key information required may be rejected.

Proposals should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to complete the proposed project. Emphasis should be placed on completeness and clarity of content. Proposals submitted for consideration should include a comprehensive scope of work and provide enough information about the project to determine whether it meets criteria stated herein. In addition, the financial plan for the project must contain enough detail so that an analysis will reveal whether the proposed project financing is feasible. Proposals should be organized in the order requested herein. All pages of the proposal should be numbered. Evaluation of proposals will be better facilitated if proposers will cross reference responses

by citing the tab number, and subletter, and repeating the text of the requirement, not the text of the proposal. If a response covers more than one page, the tab number and subletter should be repeated at the top of the next page. The proposal should contain a

table of contents, which cross references the requirements by category. Information, which the proposer desires to present, that does not fall within any of the requirements should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration. Each copy of the proposal should be bound or otherwise contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume. Proposers who submit a proposal may be required to give an oral presentation of their proposal to the City.

### ***Virginia Freedom of Information Act***

All proposals submitted to the City become the property of the City and are subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Proposers are advised to familiarize themselves with the Act's provisions to ensure that documents identified as confidential will not be subject to disclosure under FOIA. In the event that the City receives a request for public disclosure of a portion of a proposal identified as confidential, the City will attempt to notify the proposer of the request, providing an opportunity for such proposer to assert, in writing, claimed exemptions under the Freedom of Information Act or other Commonwealth law. The City will come to its own judgment whether or not the requested materials are exempt from disclosure. In the event the City elects to disclose the requested materials, it will attempt to provide the proposer advance notice of its intent to disclose.

If a proposer has special concerns about proprietary information which it would desire to make available to the City, prior to submission of its proposal, such proposer may wish to:

1. make a written request to the City for a face to face meeting to specify and justify

proposed confidential documents; 2. make oral presentation to the City if desired,; 3. receive a letter from the City accepting/rejecting the confidentiality request; 4. conduct similar process with affected local jurisdictions. Failure to take such precautions prior to submission of a proposal may subject confidential information to disclosure under the Va. FOIA.

### ***Proposal Requirements***

In order to facilitate evaluation by the City of the proposer's capabilities and project feasibility, proposals should be as thorough and detailed as possible so that the City may properly evaluate the proposer's capabilities to complete the proposed project. Proposals should include an executive summary and use cross-referencing rather than repetition in explaining the proposed project. Proposers are required to submit the following, separated by tabs within the proposal:

#### **TAB 1: Qualifications and Experience**

- a. Identify the legal structure of the firm, or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- b. Describe the experience of each firm and the key principals involved in the proposed project. Describe the length of time in business, business experience, public sector experience and other engagements of the firm(s). The lead organization must be identified.
- c. Provide the names, addresses and phone numbers of persons within the firm or consortium who may be contacted for further information.
- d. Include the address, telephone number, and the name of a specific contact person for an

entity for which the firm/consortia or primary members of the consortia have completed a similar project.

e. Provide a financial statement of the firm/consortia and each major partner. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports, if such reports have been filed.

f. Include any planned participation of small, women-, and minority-owned businesses during project development and implementation.

**TAB 2: Project Characteristics:**

a. Provide a description of the transportation facility or facilities, including the conceptual design and all proposed interconnections with other transportation facilities. Describe the project in sufficient detail so the type and intent of the project, the location, and the communities that may be affected are clearly identified. Describe the assumptions used in developing the project. The project description should be prepared in a way that fully recognizes any federal and/or Commonwealth requirements to analyze other project alignments and alternatives.

b. Identify and fully describe any work to be performed by the City.

c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals. Identify which, if any, permits or approvals are to be obtained by the City.

d. Without completing an Environmental Impact Statement, identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts. Identify the projected positive social, economic and

environmental impacts of the project.

e. List the critical factors for the project's success.

f. Identify the proposed schedule for operator's work on the project, including the estimated time for completion.

g. Propose allocation of risk and liability for past agreement work, and assurances for timely completion of the project.

h. Clearly state the assumptions related to ownership, legal liability, law enforcement and operation of the facility.

i. Provide information on any phased (partial) openings proposed prior to final completion of the work.

### **TAB 3: Project Financing**

a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase and/or segment (e.g. planning, design, construction).

b. Submit a plan for the development, financing and operation of the project, showing: the anticipated schedule on which funds will be required; and proposed sources and uses for such funds.

c. Include a list and discussion of assumptions (user fees or toll rates, and usage of the facility) underlying all major elements of the plan.

d. Identify the proposed risk factors and methods for dealing with these factors.

e. Identify any city, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment (financial, services, property, etc.), if any, expected from governmental sources; and the timing of any anticipated commitment.

#### **TAB 4: Public Support**

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the overall transportation system.
- b. Identify any anticipated government support or opposition, or general public support or opposition for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the public and other stakeholders in areas affected by the project.

#### **TAB 5: Project Benefit/Compatibility**

- a. Describe the significant benefits to the City.
- b. Describe significant benefits to the City's economic condition. Discuss whether this project is critical to attracting or maintaining competitive industries and businesses to the City or region.

#### ***Specific Deliverables (may be requested by the City)***

The following information may be requested by the City during its evaluation and selection process. Specific requirements and delivery dates will be determined on a case-by-case basis according to the proposed transportation facility.

- a. Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed facility or facilities.
- b. Provide a list of public utility facilities that will be crossed or affected by the transportation facility and a statement of the private operator's plans to accommodate such utility facility.
- c. Provide a statement setting out the plan for securing all necessary property. The

statement must include the names and addresses, if known, of the current owners of the property as well as a list of any property the proposer intends to request the City to condemn.

d. Provide a detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties. Include a brief description of the guarantees and warranties.

e. Provide the proposed total life-cycle cost specifying methodology and assumptions of the facility or facilities and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. Include in the life-cycle cost analysis a detailed analysis of the projected return and/or rate of return.

f. Include a detailed discussion of assumptions about user fees or toll rates, and usage of the facility such as traffic forecasts and assumptions.

g. Identify any known government support or opposition, or general public support or opposition for the project. Government/public support should be demonstrated through resolutions of official bodies, minutes of meetings, letters, etc.

h. Demonstrate consistency with state and local transportation plans and local comprehensive plans or indicate the steps required for acceptance into such plans.

i. Provide an explanation of how the proposed transportation facility would impact local transportation plans of each affected locality.

j. Such additional material and information as the responsible public entity may reasonably request.

***Public Comment***

The Act requires that a copy of each proposal submitted be provided by the proposer to each affected local jurisdiction (as defined in the Act) that is not a responsible public entity. Proposers should provide a copy of the proposal to any and all affected local jurisdictions at such time as the proposal is submitted to the City. Those affected local jurisdictions have 60 days from receipt of the proposal to submit written comments to the City. Local comments are encouraged as early as possible in the process to maximize consideration.

### ***Selection***

After the comment period for affected jurisdictions has expired, the City may request proposers to make presentations. The format of these presentations will include a formal presentation by the proposer, followed by any questions the City may have pertaining to the project proposal or the presentation. The City may also ask the proposer to address concerns expressed through the public comment process. Following the formal presentations, the City will evaluate all proposals using the criteria listed under "Proposal Evaluation and Selection Criteria".

### ***PROPOSAL EVALUATION AND SELECTION CRITERIA***

The following items will be considered, but the weighting and final decision is subject to the sole discretion of the City.

**Qualifications and Experience** Does the proposer propose a team which is qualified, led, and structured in a manner which will clearly enable the team to complete the proposed project?

#### **1. Experience with Similar Infrastructure Projects**



Have members of this team previously worked together constructing, improving or managing transportation infrastructure? Has the lead firm managed, or any of the member firms worked on, a similar privatization project?

## **2. Demonstration of Ability to Perform Work**

What commitments has the team made to carry out the project? Does the team possess the necessary financial, staffing, equipment, and technical resources to successfully complete the project? Do the team and/or member firms have competing financial or workforce commitments that may inhibit success and follow-through on this project?

## **3. Leadership Structure**

Is one firm designated as lead on the project? Does the organization of the team indicate a well thought out approach to managing the project? Is there an agreement/document in place between members?

## **4. Project Manager's Experience**

Is a Project Manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the Project Manager relative to the member firms? Does the Project Manager have experience leading this type and magnitude of project?

## **5. Management Approach**

Have the primary functions and responsibilities of the management team been identified? Have the members of the team developed an approach to facilitate communication among the project participants? Has the firm adequately described its approach to communicating with and meeting the expectations of the City?

## **6. Financial Condition**

Is the financial information submitted on the firms sufficient to determine the firms' capability to fulfill its obligations described in the project proposal?

## **7. Project Ownership**

Does the proposal identify the proposed ownership arrangements for each phase of the project and indicate assumptions on legal liabilities and responsibilities during each phase of the project?

## **8. Participation of Small Businesses and Businesses Owned by Women and Minorities**

What is the level of commitment by the proposers to use small, minority-, and women-owned business enterprises in developing and implementing the project?

## **9. Competitive Bidding**

To what extent have adequate and transparent procurement policies been adopted by the proposer to maximize competitive bidding opportunities for potential subcontractors and suppliers?

**Project Characteristics** Is the proposed transportation facility technically feasible?

### **1. Project Definition**

Is the project described in sufficient detail to determine the type and size of the project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g. alignments) that may need to be evaluated?

### **2. Proposed Project Schedule**

Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project? Does the proposal contain adequate assurances that the project will be completed and will be completed on time?

### **3. Operation**

Does the proposer present a reasonable statement setting forth plans for operation of the facility?

### **4. Technology**

Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Will the knowledge or technology gained from the project benefit other areas of the state or nation? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology? Can the proposed project upgrade relevant local technology?

### **5. Conforms to Laws, Regulations, and Standards**

Is the proposed project consistent with applicable state and federal statutes and regulations, or reasonably anticipated modifications of state or federal statutes, regulations or standards? Does the proposed design meet appropriate state and federal standards?

### **6. Federal Permits**

Is the project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required?

### **7. Meets/Exceeds Environmental Standards**

Is the proposed project consistent with applicable state and federal environmental statutes and regulations? Does the proposed design meet appropriate state environmental standards? Does the proposal adequately address or improve air quality conformity?

### **8. State and Local Permits**

Does the proposal list the required permits and schedule to obtain them? Are there

negative impacts known for the project? If so, is there a mitigation plan identified? Are alternatives to standards or regulations needed to avoid those impacts that cannot be mitigated?

## **9. Right of Way**

Does the proposal set forth the method by which the private operator proposes to secure all property interests required for the transportation facility? Does the statement include: the names and addresses, if known, of the current owners of the property needed for the facility, the nature of the property to be acquired, and a listing of any property that the responsible public entity is expected to be requested to condemn?

## **10. Maintenance**

Does the proposer have a plan to maintain this facility in conformance with city standards? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, toll collection and maintenance?

**Project Financing** Has the proposer provided a financial plan and financial guarantees which will allow for access to the necessary capital to finance the facility?

### **1. Financing**

Did the proposer demonstrate evidence of its ability and commitment to provide sufficient equity in the project as well as the ability to obtain the other necessary financing?

### **2. Financial Plan**

Does the financial plan demonstrate a reasonable basis for funding project development and operations? Are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Does the proposer make a financial

contribution to the project?

### **3. Estimated Cost**

Is the estimated cost of the facility reasonable in relation to the cost of similar projects? A significant portion of the final determination will rely on a cost/benefit analysis.

### **4. Life Cycle Cost Analysis**

Does the proposal include an appropriately conducted analysis of projected rate of return and life-cycle cost estimate of the proposed project and/or facility?

### **5. Business Objective**

Does the proposer clearly outline his reason for pursuing this project? Do his assumptions appear reasonable?

**Public Support** Has the proposer garnered sufficient public support for the proposed project?

### **1. Community Benefits**

Will this project bring a significant transportation and economic benefit to the City, the region, and/or the state? Are there ancillary benefits to the City because of the project?

### **2. Community Support**

What is the extent of support or opposition for the project? Does the project proposal demonstrate an understanding of the City and regional transportation issues and needs, as well as the impacts this project may have on those needs? Is there a demonstrated ability to work with the City? Have all affected local jurisdictions provided clear written statement of the extent of their support for the project?

### **3. Public Involvement Strategy**

What strategies are proposed to involve local and state elected officials in developing this

project? What level of community involvement has been identified for the project? Is there a clear strategy for informing, educating and obtaining community input through the development and life of the project?

**Project Compatibility** Is the proposed project compatible with state and local comprehensive plans?

### **1. Compatibility with the Existing Transportation System**

Does this project propose improvements that are compatible with the present and planned transportation system? Does the project provide continuity with existing and planned state and local facilities?

### **2. Fulfills Policies and Goals**

Does the proposed project help achieve performance, safety, mobility or transportation demand management goals? Does the project improve connections among the transportation modes?

### **3. Enhance Community-Wide Transportation System**

Are there identified project benefits to the affected community transportation system? Does this project enhance adjacent transportation facilities?

### **4. Consistency with Local, Regional and State Transportation Plans**

Is the project consistent with city and county comprehensive plans and regional transportation plans? Is this project consistent with plans and documents of the Virginia Multimodal Long Range Plan? If not, are steps proposed that will achieve consistency with such plans?

### **5. Economic Development**

Will the proposed project enhance the City's economic development efforts? Is the project

critical to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?

### ***THE COMPREHENSIVE AGREEMENT***

Prior to acquiring, constructing, improving, maintaining and/or operating a transportation facility, the proposer(s) selected must enter into a comprehensive agreement with the City.

A working group chaired by the City Manager will be responsible for negotiating the comprehensive agreement. Each comprehensive agreement will define the rights and obligations of the City and the respective private operator with regard to the project.

The terms of the comprehensive agreement shall include but not be limited to:

1. The right of the operator to acquire, construct, improve and/or operate the Transportation Facility, the duration of the operator's rights to operate the Transportation Facility, and the conditions under which the Transportation Facility will be dedicated to the responsible public entity;
2. The mechanism by which user fees, if any, may be established from time to time upon agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the private operator the rate of return on investment specified in the comprehensive agreement;
  - a. A copy of any service contract shall be filed with the City.
  - b. A schedule of the current user fees shall be made available by the private operator to any member of the public on request.
  - c. Classifications according to reasonable categories for assessment of user fees may be made.

3. The performance milestones that will be required of the operator;
4. The right of the operator to cross, subject to applicable permit requirements and other requirements of law, any canal or navigable water course;
5. The manner in which utilities are to be crossed or relocated and the obligation to pay the cost thereof;
6. The manner in which the operator and the City will work together to establish interconnections and interoperability between the Transportation Facility and other public transportation facilities;
7. The procedures by and conditions under which the City will exercise its power of eminent domain to facilitate the Transportation Facility;
8. The design, construction, operation and maintenance standards with which the operator must comply;
9. The requirements of the operator to submit plans and specifications for the Transportation Facility to the City and to VDOT for approval;
10. The rights of the City and VDOT to inspect construction of or improvements to the Transportation Facility;
11. The obligation of the operator to maintain the Transportation Facility and the rights of the City and VDOT to monitor the operator's maintenance;
12. The right of the operator to make and enforce, with the consent of the City and VDOT reasonable rules with respect to the Transportation Facility;
13. The terms under which the operator will reimburse the responsible public entity for services provided;
14. The reasonable maximum return or rate of return on investment authorized for the



operator to earn, the formula by which such rate of return will be calculated and the distribution of project revenues;

15. The terms and conditions under which the City and VDOT may contribute financial and/or in-kind resources, if any, for the Transportation Facility;

16. The events that will constitute operator defaults, operator's rights to notice and cure and the remedies available to the City;

17. The events that will constitute City defaults, City's rights to notice and cure and the remedies available to the operator;

18. Lender's rights and remedies with respect to operator defaults and City remedies;

19. The events that will constitute force majeure and the remedies the parties will have in the event of occurrence;

20. The insurance and bonding requirements the operator will be required to meet at each stage;

21. The allocation between the operator and the City of liabilities for, among others, property damage, personal injury, Transportation Facility repair and hazardous waste remediation;

22. The obligations of the operator to maintain records, to allow inspection and audit and to provide regular reports to the City and VDOT;

23. The conditions under which the operator may assign its rights under the comprehensive agreement and/or its rights to the Transportation Facility; and

24. Other requirements of the Public-Private Transportation Act of 1995. Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.